

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

LightSquared Subsidiary LLC) FCC File No.
)
Application for Modification of Its Authority for) SAT-MOD-20101118-00239
an Ancillary Terrestrial Component)

To: The Federal Communications Commission

COMMENTS OF VERIZON WIRELESS

Verizon Wireless submits these comments on the application by LightSquared Subsidiary LLC (“LightSquared”) to modify its Ancillary Terrestrial Component (“ATC”) authority.¹

LightSquared asks the Commission to find that it satisfies the ATC integrated service gating requirement where its wholesale customers use LightSquared’s MSS spectrum and ATC network “to offer terrestrial-only plans to their own end users.”² The proposal has far-reaching implications for the spectrum reallocation/repurposing debate, including incumbent license holders’ bundle of rights, spectrum use flexibility, and the need for incentive auctions. The LightSquared application is not the appropriate forum to consider such broad industry-wide issues. Instead, as the FCC stated earlier this year, MSS ATC changes “that might permit more extensive stand-alone terrestrial operations” should be taken “following a proceeding in which a full record concerning all potentially available options can be developed.”³

¹ See *Public Notice*, Policy Branch Information, Satellite Space Applications Accepted for Filing, Report No. SAT-00738 (Nov. 19, 2010) (“*Public Notice*”); LightSquared Subsidiary LLC, SAT-MOD-20101118-00239 (filed Nov. 18, 2010) (“*Application*”).

² *Application*, Letter Narrative at 7.

³ See *Globalstar Licensee LLC, Application to Extend Dates for Coming into Compliance with ATC Rules, Order*, 25 FCC Rcd 13114, 13130 ¶ 42 (IB/WTB/OET 2010) (“*Globalstar Denial Order*”).

DISCUSSION

The FCC adopted a number of non-technical “gating” requirements when it established the ATC policy to ensure that ATC remains ancillary to MSS operations. These include the requirement that integrated MSS and ATC services must be offered, either through dual-mode handsets (“dual-mode safe harbor”) or upon an individualized showing demonstrating that the services will be integrated.⁴ While LightSquared states that its existing ATC authority was previously based on meeting the integrated service criteria via use of dual-mode handsets,⁵ it now seeks to “update[] its ATC integrated service showing” as its “business plans have evolved.”⁶ LightSquared now explains that it will operate its nationwide 4G LTE network “on a wholesale basis and make capacity on the network available to customers serving end users.”⁷ As a result, its service “will be integrated from the perspective of LightSquared’s [wholesale] customers” because (1) its “satellite and terrestrial components will comprise a single network”; (2) it will “only offer rate cards with integrated MSS/ATC pricing” for its wholesale customers; and (3) it will takes steps to ensure that dual-mode “component parts” (e.g., a chipset) are “available.”⁸

Grant of the application would allow LightSquared’s wholesale customers to offer a stand-alone ATC service. As a threshold matter, the requirement to provide integrated service prohibits stand-alone ATC offerings and ATC-only subscriptions:

We reiterate our intention not to allow ATC to become a stand-alone system.... We will not permit MSS/ATC operators to offer ATC-only subscriptions, because ATC systems would then be

⁴ 47 C.F.R. § 25.149(b)(4).

⁵ *Public Notice* at 1; Application, Letter Narrative at 1.

⁶ Application at 10 Item 43 & Letter Narrative at 2.

⁷ Application, Letter Narrative at 3.

⁸ *Id.* at 3-5.

terrestrial mobile systems separate from their MSS systems. *We therefore clarify that “integrated service” as used in this proceeding and required by 47 C.F.R. § 25.149(b)(4) forbids MSS/ATC operators from offering ATC-only subscriptions.*⁹

However, LightSquared’s service will not necessarily be integrated from the perspective of its wholesale customers’ end users.¹⁰ Thus, while LightSquared’s wholesale customers may “be able to offer their end users dual-mode devices,” the application readily acknowledges they will “have the ability to offer terrestrial-only plans to their own end users.”¹¹

Grant of the application would thus permit LightSquared’s wholesale customers to use its LTE network to offer all ATC end users stand-alone terrestrial service. In essence, LightSquared is asserting that its integrated service obligation extends only to the service it makes available to its wholesale customers, and that what those providers do vis-à-vis the service they provide to the end-user public is beyond the scope of the integration requirement. There is no support for such a proposition, as the Commission has clearly stated that the integrated service requirement is intended to ensure that *the public* receives the benefit of an integrated MSS/ATC offering¹²:

⁹ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers, Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616, 6428 ¶ 33 (2005) (“*MSS ATC Recon. Order*”) (emphasis added).

¹⁰ Application, Letter Narrative at 3, 7.

¹¹ *Id.* at 3, 7. LightSquared states that its modification application “merely elaborates on a business plan that the company filed previously in the Harbinger-SkyTerra transfer of control proceeding,” and which appeared in Appendix B to the order in that proceeding. However, the referenced business plan makes no suggestion that MSS ATC spectrum will be used for a stand-alone terrestrial service. *Compare* Opposition of LightSquared Subsidiary LLC, SAT-MOD-20101118-00239, at 2 n.6 (Nov. 24, 2010) with *SkyTerra Communications, Inc. and Harbinger Capital Partners Funds, Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC, Memorandum Opinion and Order and Declaratory Ruling*, 25 FCC Rcd 3059, 3093-3100 App. B. (2010).

¹² *Flexibility for Delivery of Communications by Mobile Satellite Service Providers, Report and Order*, 18 FCC Rcd 1962, 2009 ¶ 88 (2003) (“*MSS ATC Order*”) (subsequent history omitted) (“This integrated service requirement ... will help ensure that MSS remains first and foremost a satellite service and that the terrestrial component remains ancillary to the primary purpose of the (continued on next page)

[E]ven if an MSS licensee were to enter an agreement to lease some or all of the access to its authorized MSS spectrum to a terrestrial licensee, such spectrum could only be used *if its usage met the requirements to ensure it remained ancillary to MSS and were used [sic] in conjunction with MSS operations, i.e., that it met all of our gating requirements*. The purpose of our grant of ATC authority is to provide satellite licensees flexibility in providing satellite services that will benefit consumers, *not to allow licensees to profit by selling access to their spectrum for a terrestrial-only service*.¹³

Indeed, where the Commission has granted a waiver of the integrated service requirement in the past, it applied the waiver conditions not only to the MSS operator but also to the third party provider.¹⁴ LightSquared's application is inconsistent with that precedent.

Furthermore, allowing wholesale customers the ability to offer a stand-alone terrestrial service that the MSS ATC licensee itself could not provide is inconsistent with basic secondary market principles that the rights of a lessee are merely derivative of, and no greater than, the licensee. As the Commission has stated, "a lessee of MSS spectrum, including the spectrum associated with ancillary terrestrial component, has neither greater rights nor greater obligations

MSS system. In this manner, *the public* will be able to obtain the many benefits associated with the deployment of MSS systems.") (emphasis added).

¹³ *Id.* at 1966 ¶ 3 n.5 (emphasis added).

¹⁴ See *Globalstar Licensee LLC, Application for Modification of License for Operation of ATC Facilities, Order and Authorization*, 23 FCC Rcd 15975, 15993 ¶ 41 (2008) ("*Globalstar ATC Modification Order*") ("Globalstar and any affiliated ATC provider shall deploy MSS-ATC first generation terminals (i.e., those without a high-speed MSS chip set) only to communities served pursuant to the RUS loan. Globalstar and any affiliated ATC provider(s) shall not market or distribute MSS-ATC terminals that cannot be upgraded to high-speed MSS after early 2010. Beginning in early 2010, any MSS-ATC terminals marketed or distributed by Globalstar and any affiliated ATC provider(s) shall be upgradeable to include high-speed MSS. After early 2011, Globalstar and any affiliated ATC provider shall have a chipset available that provides high-speed MSS, and upon availability in production quantities of such chipset at that time, Globalstar and any affiliated ATC provider(s) shall market and distribute only MSS-ATC terminals that can provide such services. Globalstar shall require such affiliate(s) to contractually agree to comply with this requirement and shall take any other steps necessary to ensure that this requirement is met.").

than the satellite licensee in providing ATC service.”¹⁵ It makes no difference whether LightSquared makes its spectrum available to its wholesale customers on a lease or resale basis.

LightSquared’s proposed service offering does not otherwise meet the integrated service requirement. The integrated service requirement is predicated on a “showing that the primary purpose of the MSS licensee’s system remains the provision of MSS.”¹⁶ First, LightSquared’s conclusory assertion that its network will be “integrated technically” – because all traffic, whether satellite or terrestrial, will be processed through the same network, business/operations support systems, and data centers¹⁷ – is unavailing. How traffic is processed fails to show in any way how the primary purpose of LightSquared’s system remains MSS with only an ancillary terrestrial service – particularly if wholesale customers never even access the satellite and end users’ use of ATC is completely independent from MSS.

Second, LightSquared’s “unified cost structure” similarly fails to show that the primary purpose of its system is MSS and that its offering is therefore an integrated service. As noted above, LightSquared’s MSS/ATC offering would extend only to its wholesale customers, and those wholesale providers would have the discretion to offer only stand-alone terrestrial service to the public.¹⁸ Moreover, the pricing scheme as described does not advance integrated service. LightSquared asserts that wholesale customers who acquire terrestrial service “will have to pay

¹⁵ *Id.* at 15986-87 ¶ 25; *see also Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503, 17572 ¶ 151 (2004) (“[S]pectrum lessees cannot have any greater right to the use of licensed spectrum than the licensee.”).

¹⁶ *MSS ATC Order*, 18 FCC Rcd at 2009 ¶ 88.

¹⁷ *See Application*, Letter Narrative at 4.

¹⁸ *See id.* at 3, 7; *see also id.* at 2-3 (“LightSquared will have an integrated pricing structure under which the retailers that purchase services from LightSquared will pay for both satellite air time and terrestrial air time *regardless of whether they choose to offer dual-mode or terrestrial-only devices.*”) (emphasis added).

for the satellite capacity that comes with it, whether they use the satellite capacity or not.”¹⁹ LightSquared describes its single rate as follows: for each GB of terrestrial usage, the customer will receive 500 kB of satellite usage (with additional charges for satellite usage above that amount).²⁰ This “unified” rate represents a 2000:1 ratio of terrestrial to satellite capacity. Given the need to price terrestrial capacity aggressively within the highly competitive wireless data marketplace and the infinitesimal amount of satellite capacity relative to terrestrial, one cannot reasonably assert that wholesale customers are “pay[ing] for satellite capacity” whether they use it or not.

Finally, it is not at all clear that LightSquared’s efforts regarding chipsets will result in the sale to end users of dual-mode devices that have the capability of communicating via MSS and ATC. LightSquared is committing only to take “commercially reasonable measures” to ensure components are “available from . . . mainstream component suppliers.”²¹ It makes no commitment to ensure that *all* components needed to offer a dual-mode phone are actually available to its wholesale customers, let alone sold to end users.²² For example, the application does not address whether the dual-mode chipset produced by Qualcomm contains “all the hardware and software necessary to acquire and communicate via both the operator’s MSS system’s signal and its ATC system’s signal.”²³ The *potential availability* of a handset with

¹⁹ *Id.* at 7.

²⁰ *Id.* at 6; *see also* Erratum to Marlene H. Dortch, Secretary, FCC, from Jeffrey S. Carlisle, Executive Vice President, Regulatory Affairs and Public Policy, LightSquared Subsidiary LLC (Nov. 19, 2010).

²¹ Application, Letter Narrative at 5.

²² *See id.* at 6 (stating that its efforts will give its wholesale customers the “incentive” but not the mandate “to make dual mode devices available to end users”).

²³ *MSS ATC Recon. Order*, 20 FCC Rcd at 4627 ¶ 29.

some dual-mode components, but without the certainty that it provides MSS capability, is insufficient to meet the Commission's integrated service requirement.

For all these reasons, the LightSquared application fails to satisfy the current integrated service requirement.

A waiver of the integrated service requirement, even if LightSquared had attempted to justify one, would undermine the purpose of the FCC's ATC gating criteria. While LightSquared also asserts that there is "ample basis" to grant it a waiver if its integrated service showing is insufficient, its application provides none.²⁴ In fact, LightSquared offers no argument or explanation at all to justify a waiver.²⁵ Accordingly, this cannot be the basis for a grant.

Even if LightSquared had attempted to justify a waiver, it could not have satisfactorily done so as any such waiver would undermine the purpose of the ATC gating criteria. Indeed, the FCC recently denied a request by Globalstar to extend a waiver of the ATC gating criteria in part because Globalstar was unable to comply with the integrated service requirement. As a result, the FCC suspended Globalstar's ATC authority and told its spectrum lessee, Open Range, that it could not continue to provide terrestrial service.²⁶ The Commission observed, "a stand-alone terrestrial service would not serve the purposes of the ATC rules, which are to enhance MSS

²⁴ See Application, Letter Narrative at 10.

²⁵ See 47 C.F.R. § 1.3 (Commission may waive rule provisions "for good cause shown" by the petitioner); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (party seeking waiver of a rule's requirements must demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest"); *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

²⁶ See *Globalstar Denial Order*, 25 FCC Rcd at 13115 ¶¶ 1-2. The Commission granted Open Range STA authority until January 31, 2011 to continue operating on the spectrum it was leasing from Globalstar to afford it time to gain access to other spectrum. See *Open Range, Request for Special Temporary Authority, Order on Reconsideration*, 25 FCC Rcd 13383 (2010).

coverage and to enable MSS operators to extend service into areas that they were previously unable to serve, such as the interiors of buildings and high-traffic-density urban areas.”²⁷ Yet here, if the FCC were to grant LightSquared’s request, it would override the integrated service requirement and permit a stand-alone ATC service. Such a determination would directly conflict with the purpose of the ATC rules and the Commission’s recent Globalstar decision.

LightSquared’s request should be addressed in a rulemaking proceeding. In denying Globalstar’s recent request, the Commission observed that any decision that could “override the policy underlying the ATC gating rules” should take place in a broader proceeding, not in an ATC modification application.²⁸ Specifically, the Commission stated:

[T]o the extent the Commission would consider changes in its rules that might permit more extensive stand-alone terrestrial operations in this frequency band, this action would be taken following a proceeding in which a full record concerning all potentially available options can be developed.²⁹

That is exactly what the FCC should do here. Grant of the application would set a precedent that would allow an MSS licensee to wholesale its service or spectrum to providers who could then use MSS spectrum to make available to end users a stand-alone terrestrial service. A change of this magnitude thus has implications not only for the LightSquared spectrum, but also more broadly for MSS ATC flexibility, all incumbent license holders’ rights and expanded flexibility. Moreover, this change could impact the utility of incentive auctions, as it will diminish MSS licensees’ incentive to return their unused and/or underused spectrum for inclusion in an auction. These broad issues of general applicability should be addressed through

²⁷ *Globalstar Denial Order*, 25 FCC Rcd at 13116 ¶ 5.

²⁸ *Id.* at 13130 ¶¶ 41-42.

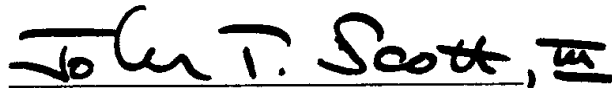
²⁹ *Id.* at 13130 ¶ 42.

rulemaking, not piecemeal adjudication.³⁰ In fact, the FCC has already commenced an inquiry examining additional flexibility in the MSS bands³¹ and could, as a next step, issue a *Notice of Proposed Rulemaking* in that proceeding that seeks comment on the broad issues raised by LightSquared in its application.

CONCLUSION

For the foregoing reasons, Verizon Wireless urges the Commission to consider these issues in a broader proceeding of general applicability.

Respectfully submitted,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive, slightly stylized font. The "J" is large and loops around the "o". The "T" is simple and vertical. The "S" is large and loops around the "c". The "c" is small and loops around the "t". The "I" is a simple vertical line. The "I" is a simple vertical line. The "I" is a simple vertical line.

John T. Scott, III
Vice President & Deputy General Counsel

Catherine M. Hilke
Counsel

VERIZON WIRELESS
1300 I Street N.W.
Suite 400 West
Washington, D.C. 20005
(202) 589-3760

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³⁰ See *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983) (holding that “rulemaking is generally a ‘better, fairer, and more effective’ method of implementing a new industrywide policy” than ad hoc adjudication); *Pfaff v. Department of Housing & Urban Development*, 88 F.3d 739, 748 n.4 (9th Cir. 1996) (“Adjudication is best suited to incremental developments to the law, rather than great leaps forward.”); *Amendment of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band*, 12 FCC Rcd 12545, 12705 (1997) (subsequent history omitted) (“[G]uidance from the courts indicates that issues of general applicability are more suited to rulemaking than to adjudication.”).

³¹ See *Fixed and Mobile Services in the Mobile Satellite Service Bands, Notice of Proposed Rulemaking and Notice of Inquiry*, 25 FCC Rcd 9481, 9492 ¶ 26 (2010).

CERTIFICATE OF SERVICE

I, Sarah Trosch, hereby certify that on this 2nd day of December, 2010, I caused to be served a true copy of the foregoing "Comments of Verizon Wireless" by first class mail, postage pre-paid, upon the following:

Jeffrey J. Carlisle*
Executive Vice President
Regulatory Affairs and Public Policy
LightSquared
10802 Parkridge Boulevard
Reston, VA 20191

Christopher Guttman-McCabe*
Vice President, Regulatory Affairs
Brian M. Josef*
Director, Regulatory Affairs
CTIA – The Wireless Association®
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036

Mindel Del La Torre*
Chief, International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Ruth Milkman*
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Robert Nelson*
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

/s/

Sarah Trosch

* Copy also sent via e-mail.